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11  
12 *Attorneys for Plaintiff / Counter-Defendant*  
13 *Nevada Controls, LLC*

14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 \* \* \*

17 NEVADA CONTROLS, LLC, a Nevada  
18 Limited Liability Company,

Case No.: 3:12-cv-00068-HDM-VPC

19 Plaintiff,

20 v.

21 WIND PUMP POWER, LLC, a Kansas  
22 Limited Liability Company, SUNFLOWER  
23 WIND, LLC, a Kansas Limited Liability  
24 Company; DAN RASURE, an individual,

25 Defendants.

REPLY TO COUNTERCLAIM

(Jury Trial Demanded)

26 AND RELATED CLAIMS

27 Counter-Defendant Nevada Controls, LLC ("Nevada Controls"), hereby responds  
28 to the allegations of the Counterclaim of Wind Pump Power, LLC ("WPP") as follows:

29 1. In responding to the allegations contained in paragraph 1 of the  
30 Counterclaim, Nevada Controls admits that Nevada Controls and WPP executed a  
31 document entitled Mutual Non-Disclosure and Confidentiality Agreement. It further  
32 admits that Nevada Control's representative executed the document on June 23, 2011.  
33 The remaining allegations of paragraph 1 are denied.

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1           2. In responding to the allegations contained in paragraph 2 of the  
2 Counterclaim, Nevada Controls admits that paragraph 2 contains a quotation from a  
3 portion of Section 2 of the Confidentiality Agreement. However, the Confidentiality  
4 Agreement also provides:

5           Confidential Information shall not, however, include any  
6 information which the receiving Party can establish (i) was  
7 publicly known and made generally available in the public  
8 domain prior to the time of disclosure to the receiving Party;  
9 (ii) becomes publicly known and made generally available  
10 after disclosure to the receiving Party, through no fault,  
11 action or inaction of the Party; or (iii) is in the possession of  
12 the Party, without confidentiality restrictions, at the time of  
13 disclosure by the other Party as shown by the Party's files  
14 and records immediately prior to the time of disclosure; (iv) is  
15 independently developed by the receiving Party, if receiving  
16 Party can provide reasonable written proof of independent  
17 development.

18           The remaining allegations of paragraph 2 are denied.

19           3. The allegations of paragraph 3 are denied.

20           4. In responding to the allegations of paragraph 4 of the Counterclaim,  
21 Nevada Controls admits that there has been no written notice of termination of the  
22 Confidentiality Agreement. The remaining allegations of paragraph 4 are denied.

23           5. In responding to the allegations of paragraph 5 of the Counterclaim,  
24 Nevada Controls admits that paragraph 5 contains an accurate quotation of paragraph  
25 8 of the Confidentiality Agreement. The remaining allegations of paragraph 5 are  
26 denied.

27           6. In responding to the allegations of paragraph 6 of the Counterclaim,  
28 Nevada Controls admits that paragraph 6 contains an accurate quotation of paragraph  
10 of the Confidentiality Agreement.

11           7. In responding to the allegations of paragraph 7 of the Counterclaim,  
12 Nevada Controls admits that it purchased monopole towers for purposes of installing  
13 wind turbines on the Austin project. The remaining allegations of paragraph 7 are  
14 denied.

15           ///

1           8. In responding to the allegations of paragraph 8 of the Counterclaim,  
2 Nevada Controls realleges the allegations contained in the preceding paragraphs as if  
3 set forth verbatim herein.

4           9. In responding to the allegations contained in paragraph 9 of the  
5 Counterclaim, Nevada Controls admits that the Confidentiality Agreement refers to  
6 written materials, and the word "suppliers" is contained in Section 2 of that Agreement.  
7 The remaining allegations of paragraph 9 are denied.

8           10. The allegations of paragraph 10 are denied.

9           11. The allegations of paragraph 11 are denied.

10          12. The allegations of paragraph 12 are denied.

11          13. In responding to the allegations of paragraph 13, Nevada Controls  
12 realleges the allegations contained in the preceding paragraphs as if set forth verbatim  
13 herein.

14          14. The allegations of paragraph 14 are denied.

15          15. The allegations of paragraph 15 are denied.

16          16. The allegations of paragraph 16 are denied.

17          17. The allegations of paragraph 17 are denied.

#### **AFFIRMATIVE DEFENSES**

19          1. The Counterclaims are barred by the doctrines of estoppel, waiver,  
20 laches, and unclean hands.

21          2. WPP has not incurred any damages for which Nevada Controls may be  
22 lawfully held responsible.

23          3. WPP has failed to mitigate its damages, if any were sustained.

24          4. The contract claim is barred by the failure of consideration and lack of  
25 mutuality.

26          5. The unjust enrichment claim is barred because the parties entered into a  
27 written agreement.

28          6. The Counterclaim fails to state a claim for which relief may be granted.

7. The Counterclaims are not well grounded in fact and are not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and are interposed for an improper purpose.

Dated: March 29, 2012.

McDonald Carano Wilson LLP

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JESSICA WOELFEL

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Nevada Controls, LLC

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## CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano Wilson LLP and that pursuant to LR 5-3 I caused to be electronically filed on this date a true and correct copy of the foregoing document with the Clerk of the Court using the CM/ECF system; and by depositing a copy of the same in the U.S. Mail, first class postage fully prepaid, addressed to:

Michael R. Kealy  
Robert W. DeLong  
Parsons Behle & Latimer  
50 W. Liberty Street, Suite 750  
Reno, Nevada 89501

DATED: March 29, 2012.

Pamela Miller

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